

Message Text

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ACTION L-02

INFO OCT-01 SS-14 ISO-00 NSC-07 NSCE-00 CIAE-00 INR-11

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R 262235Z SEP 74

FM AMEMBASSY SAN JOSE

TO SECSTATE WASHDC 8209

C O N F I D E N T I A L SECTION 1 OF 2 SAN JOSE 3738

LIMDIS

E.O. 11652: GDS

TAGS: PFOR, PGOV, CS

SUBJECT: VESCO CASE: SELECTION OF NEW LAWYER FOR EXTRADITION

1. SUMMARY: CHARGE DISCUSSED VESCO ESTRADITION PROBLEM WITH ATTORNIES EDUARDO ORTIZ AND FRANCISCO CASTILLO PRIOR TO LATTER'S DEPARTURE FROM COSTA RICA. THEY SEE MANY COMPLEXITIES SURROUNDING ANY FUTURE ATTEMPT, AND PROPOSE CAREFUL ADVANCE STUDY OF LEGAL PROBLEMS AND TACTICS. EMBASSY RECOMMENDS THAT SUCH STUDY BY ORTIZ BE AUTHORIZED.

2. WITH CHARGE'S AUTHORIZATION, CASTILLO BRIEFED LOCAL ATTORNEY EDUARDO ORTIZ PRIOR TO HIS (CASTILLO'S) DEPARTURE FOR GERMANY ON THE BACKGROUND OF OUR EARLIER ATTEMPT TO EXTRADITE VESCO FROM COSTA RICA. ORTIZ IS AWARE THAT WE MAY CONSIDER ANOTHER EXTRADITION ATTEMPT ON ONE OR MORE OTHER GROUNDS, BUT CASTILLO DID NOT RPT NOT BRIEF HIM ON WHAT THOSE GROUNDS MAY BE.

3. CHARGE AUTHORIZED THIS BRIEFING BECAUSE EMBASSY HAD DECIDED TO RECOMMEND ORTIZ' NAME TO DEPARTMENT OF JUSTICE AS OUR ATTORNEY IN EVENT OF FUTURE PROCEEDINGS, AND BECAUSE THIS WAS LAST CHANCE TO CAPITALIZE ON CASTILLO'S
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EXPERTISE IN DIRECT EXCHANGE WITH POSSIBLE SUCCESSOR.

NO RPT NO COMMITMENT WAS MADE TO ORTIZ; CHARGE INFORMED HIM PRIOR TO BRIEFING THAT DECISION ON CHOICE OF ATTORNEY RESTED WITH DEPARTMENT OF JUSTICE AND THAT EMBASSY HAD NOT RECEIVED AUTHORITY TO HIRE ANYBODY.

4. EDUARDO ORTIZ IS PROMINENT ATTORNEY AND DEAN OF LAW SCHOOL AT UNIVERSITY OF COSTA RICA. HE IS INCLUDED IN EMBASSY'S LIST OF ATTORNEYS AND SPEAKS EXCELLENT ENGLISH, AND HE WAS IN FACT THE "EMBASSY'S LAWYER" BEFORE HIS LAW SCHOOL DUTIES BEGAN TO ABSORB MUCH OF HIS TIME. DEPARTMENT WILL RECAL HIS ROLE IN AID-LAW SCHOOL CONTROVERSY OVER A YEAR AGO, AND EMBASSY HAS GIVEN THAT EPISODE FULL CONSIDERATION IN DECIDING ON OUR RECOMMENDATION. IN OUR JUDGMENT, AND BASED ON CAREFUL SOUNDINGS TAKEN IN THE LOCAL LEGAL COMMUNITY (INCLUDING FRANCISCO CASTILLO) HE IS THE BEST MAN FOR OUR PRESENT PURPOSE AND ABSOLUTELY RELIABLE (I.E., NON-CORRUPTIBLE) IN ANY ACTION AGAINST VESCO. HE IS SOMETHING OF A PRIMA DONNA, BUT WE BELIEVE HIS DISCRETION AND INTEGRITY WITH RESPECT TO THIS CASE ARE ABOVE QUESTION.

5. WHILE NOT AN EXPERT IN PENAL LAW, ORTIZ IS CONSIDERED AN OUTSTANDING ATTORNEY WITH PARTICULAR STRENGTH IN COMPARATIVE AND INTERNATIONAL PUBLIC LAW. MOREOVER, IN HIS ROLE AT THE LAW SCHOOL AND IN THE LEGAL COMMUNITY HE IS IN A POSITION TO COMMAND LEGAL RESOURCES WHICH WOULD COMPLEMENT HIS OWN SKILLS AND WHICH COULD BE INVALUABLE TO US. FOR EXAMPLE, HE IS PERSONALLY VERY CLOSE TO DR. RODOLFO PIZA, AN EXPERT IN CONSTITUTIONAL LAW, WHO MIGHT HAVE BEEN OUR CHOICE IF HE WERE NOT A LEADING OPPOSITION DEPUTY (PNI) WHO IS CONSPICUOUSLY INVOLVED IN THE CURRENT ASSEMBLY DEBATE OVER THE NOTORIOUS (VESCO) EXTRADITION LAW. THE CASE OF PIZA, BY THE WAY, POINTS UP THE DIFFICULTY WE FACE IN PICKING A LAWYER WHO IS NOT POLITICALLY IDENTIFIED TO AN UNACCEPTABLE DEGREE, WHO HAS EXCELLENT PROFESSIONAL CREDENTIALS, AND AT THE SAME TIME IS ABSOLUTELY IMMUNE AGAINST BEING BOUGHT OFF BY VESCO (OR THE GOVERNMENT, FOR THAT MATTER). ORTIZ MEETS ALL THREE TESTS. THERE IS SIMPLY NO PENAL LAW AUTHORITY AVAILABLE TO US WHO DOES. IT SHOULD BE NOTED, HOWEVER, CONFIDENTIAL

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THAT IN CASTILLO'S AND OTHERS' JUDGMENT A PENAL LAW EXPERT IS NOT CRITICALLY NECESSARY IN OUR CASE AND THAT IN ANY EVENT ORTIZ CAN GET THE TECHNICAL ASSISTANCE HE NEEDS IN THIS FIELD. MOREOVER, ORTIZ MANAGED THE ONE OTHER IMPORTANT EXTRADITION CASE HERE IN RECENT YEARS WHEN HE LOST THE DHARMA TEJA CASE FOR THE INDIAN GOVERNMENT. THAT CASE HAD COMPARABLE POLITICAL OVERTONES WHICH ARE UNIVERSALLY

BELIEVED HERE TO BE THE REASON ORTIZ LOST THE CASE.
IT WAS A MODEL PRESENTATION ACCORDING TO LAWYERS FAMILAR
WITH IT.

6. ON SEPTEMBER 13, FOLLOWING CASTILLO'S BRIEFING OF
ORTIZ, CHARGE MET WITH BOTH OF THEM. ON THE BASIS OF
THAT BRIEFING AND HIS OWN QUICK REVIEW OF OUR EARLIER
CASE, THE TREATY AND THE 1974 EXTRADITION LAW, ORTIZ
COMMENTED THAT

A) GIVEN THE EXISTENCE OF THE PRESENT LAW, ANY EFFORT ON
OUR PART TO EXTRADITE VESCO WILL BE EXTREMELY DIFFICULT.
AT BEST OUR CASE MAY BE DELAYED INDEFINITELY--EVEN
YEARS--BY RUSES BASED ON THE "PROCEDURAL" PITFALLS
CONTAINED IN THE LAW. OR IT MIGHT EVEN BE THROWN OUT
BY THE LOWER COURTS AT THE FIRST STEP WITHOUT POSSIBILITY
OF APPEAL. OR EVEN IF OUR CASE PROSPERED, THE USG MIGHT
BE FACED WITH UNACCEPTABLE "CONDITIONS" ON THE EXTRA-
DITION WHEN EFFECTED UNDER PROVISIONS OF THE SAME LAW.

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ACTION L-02

INFO OCT-01 ISO-00 SS-14 NSC-07 NSCE-00 CIAE-00 INR-11

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R 262235Z SEP 74

FM AMEMBASSY SAN JOSE

TO SECSTATE WASHDC 8210

C O N F I D E N T I A L SECTION 2 OF 2 SAN JOSE 3738

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B) IT MAY BE POSSIBLE TO ATTACK THE CONSTITUTIONALITY
OF THE LAW, BUT THIS NEEDS CAREFUL STUDY SINCE IF
SUCH AN ATTEMPT FAILED WE COULD BE WORSE OFF THAN BEFORE
IN THAT THE VALIDITY AND EVEN APPLICABILITY OF THE LAW
MIGHT BE REINFORCED BY THE COURT'S DECISION.

C) SHOULD THE ASSEMBLY REVOKE OR MODIFY THE LAW IN
THE NEAR FUTURE, IT MAY STILL BE NECESSARY TO ATTACK THE
CONSTITUTIONALITY OF THE EXISTING LAW IN ORDER TO AVOID

ITS RETROACTIVE APPLICABILITY TO VESCO'S CASE UNDER ARTICLE 34 OF THE CONSTITUTION.

7. MUCH OF THE SENSE OF THESE PROBLEMS HAS ALREADY BEEN CONVEYED TO STATE AND JUSTICE BY CASH))9 TO JUDGE FOR. THE)/M MEMCON OF SEPTEMBER 11 RECENTLY RECEIVED HERE. IN CONVERSATION REPORTED ABOVE, ORTIZ ARGUED STRONGLY AND CASTILLO CONCURRED THAT MORE STUDY SHOULD BE DEVOTED TO SUCH QUESTIONS AS THESE:

A) TIMING OF ANY NEW ATTEMPT, I.E., BEFORE OR AFTER ASSEMBLY ACTION TO REPEAL OR MODIFY THE VESCO LAW (EACH COULD INDICATE A COMPLETELY DIFFERENT LEGAL TACTIC).

B) TIMING OF PRESENTATION OF "RECOURSE OF CONSTI-TUTIONALITY" AGAINST THAT LAW, I.E., WHETHER SIMULTANEOUSLY WITH EXTRADITION REQUEST OR AT SUCH SUBSEQUENT TIME IN PROCEEDINGS AS COURT ACTUALLY INVOKES THE LAW EITHER DIRECTLY OR RETROACTIVELY UNDER ARTICLE 34 OF CONSTITUTION.

C) WHETHER IT WOULD BE TACTICALLY BEST TO PRESENT CONFIDENTIAL

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EXTRADITION REQUEST AT OUTSET BASED ON ONLY ONE COUNT UNDER TREATY, OR BETTER TO PRESENT SEVERAL COUNTS AT ONCE IF WE HAVE THEM.

8. ORTIZ HAS INDICATED HIS AGREEMENT IN PRINCIPLE TO ACT AS OUR LAWYER IF WE WANT HIM, BUT HE BELIEVES STRONGLY THAT NEITHER WE NOR HE SHOULD UNDERTAKE A FUTILE CAUSE. (EMBASSY AGREES FOR REASONS THAT GO BEYOND THE VESCO CASE AND AFFECT OUR OVER-ALL PRESTIGE AND INFLUENCE HERE.) FOR THAT REASON STUDY SUGGESTED PARA 7 ABOVE APPEARS ESSENTIAL TO HIM TO DECIDE WHETHER AND HOW USG SHOULD PROCEED. IF CONCLUSIONS OF STUDY ARE TOO BLEAK, IT IS POSSIBLE THAT ORTIZ MIGHT NOT WISH TO REPRESENT US, AND THAT WE SHOULD THEN GIVE CAREFUL THOUGHT TO HOW WE PROCEED.

9. ACTION REQUESTED: EMBASSY RECOMMENDS THAT DEPARTMENT OF JUSTICE AUTHORIZE US TO ENGAGE ORTIZ TO UNDER-TAKE PROPOSED STUDY, INCLUDING PROBLEM OF "JURISDICTION" ARISING UNDER ARTICLE I OF TREATY AS DISCUSSED IN L/M MEMCON AND ANY OTHERS THAT STATE/JUSTICE MAY HAVE IN MIND. (JURISDICTION POINT HAS NOT BEEN DISCUSSED WITH ORTIZ.) HE PREVIOUSLY ESTIMATED THAT STUDY WOULD TAKE AT LEAST A FULL WEEK OF THIS TIME AND WOULD COST \$2,500. IN ACCORDANCE WITH OUR CONVICTION THAT AFTER PREVIOUS FAILURE USG CANNOT AFFORD TO MAKE ANYTHING LESS THAN BEST EFFORT IF WE TRY AGAIN TO GET VESCO IN COSTA RICA, INVESTMENT IN THIS STUDY APPEARS TO US EMINENTLY WORTHWHILE. IT WILL SERVE ADDITIONAL, SUBSIDIARY ADVANTAGE OF SHOWING WHAT ORTIZ CAN DO IN TECHNICAL,

LEGAL SENSE AND GET HIM THOROUGHLY READ INTO COMPLEXITIES
OF OUR PROBLEM. FINAL JUDGMENT ON WHETHER TO ENGAGE
ORTIZ AS OUR LAWYER FOR ACTUAL EXTRADITION ATTEMPT CAN
BE MADE LATER, BUT OUR ENDORSEMENT OF STUDY PROPOSAL
REFLECTS EMBASSY'S JUDGMENT THAT HE IS OUR BEST CANDIDATE.
AS TO TIMING, OUR LATEST INFORMATION IS THAT ASSEMBLY
COMMITTEE WILL PRODUCE A "DICTAMEN" (REPORT) PROPOSING A
NEW LAW AMENDING RATHER THAN REPEALING "VESCO LAW"
WITHIN TWO WEEKS AND CONCEIVABLY THE COMMISSION-RECOMMENDED
VERSION COULD UNDERGO SOME FURTHER MODIFICATIONS IN
PLENARY DEBATE. THE ENTIRE PROCESS COULD BE OVER BY
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MID-OCTOBER. ORTIZ SHOULD BE READY TO BEGIN HIS STUDY
AS SOON AS SHAPE OF NEW LAW IS KNOWN.
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